



To the Honorable Council
City of Norfolk, Virginia

April 12, 2016

From: David S. Freeman, AICP, Director, General
Services

Subject: Acceptance of Bid for Long-
Term Parking Agreement for 165
parking spaces in the Fountain Park
Garage and Commercial Place Garage.

Reviewed: Sabrina Joy-Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number:
IB-1

- I. **Recommendation:** Accept highest bid from a responsible bidder and adopt ordinance.
- II. **Applicant:** City of Norfolk
- III. **Description:**
This agenda item is an ordinance accepting a bid for a Long-Term Parking Agreement (the "agreement") of 165 parking spaces in the Fountain Park Garage located at 130 Bank Street and Commercial Place Garage located at 520 East Main Street (collectively "the garages"). The garages have sufficient available capacity to accommodate the 165 parking spaces required by the agreement.
- IV. **Analysis**
As stated above, sufficient capacity is available in the garages to accommodate the potential demand of up to 165 total spaces. The term of the agreement would be eleven and one-half (11.5) years with an option to extend the term for up to four (4) additional periods of five (5) years each. Because the term is in excess of five (5) years, the proposed lease must be bid in accordance with the requirements of sections 15.2-2100, 15.2-2101 and 15.2-2102 of the *Code of Virginia*.
- V. **Financial Impact**
Revenues from this agreement will support debt service and operations of the Parking System.
- VI. **Environmental**
N/A

VII. Community Outreach/Notification

In accordance with the *Norfolk City Charter* and the *Code of Virginia*, legal notice was posted in *The Virginian-Pilot*. In addition, public notification for the agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services, the Department of Development and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A - Terms and Conditions of Proposed Long-Term Parking Agreement
- Invitation to Bid

3/7/16mr

Form and Correctness Approved: 

By

Office of the City Attorney

Contents Approved:

By 

DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG TERM GARAGE PARKING AGREEMENT, WITH A TERM OF APPROXIMATELY 11.5 YEARS, WITH THE OPTION TO EXTEND THE TERM FOR UP TO FOUR (4) ADDITIONAL PERIODS OF FIVE (5) YEARS EACH, FOR THE LEASE OF 165 PARKING SPACES IN THE CITY OF NORFOLK IN FOUNTAIN PARK GARAGE LOCATED AT 130 BANK STREET AND COMMERCIAL PLACE GARAGE LOCATED AT 520 E. MAIN STREET.

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WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a lease of 165 parking spaces in the City of Norfolk in Fountain Park Garage located at 130 Bank Street and Commercial Place Garage located at 520 E. Main Street for a term of approximately 11.5 years, with the option to extend the term for up to four (4) additional periods of five (5) years each, subject to certain terms and conditions; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That _____, being the highest responsible bidder, its bid for a parking

agreement, with a term of approximately 11.5 years, with the option to extend the term for up to four (4) additional periods of five (5) years each, in accordance with the terms and conditions set forth in Exhibit A attached hereto, for 165 parking spaces in the City of Norfolk in Fountain Park Garage located at 130 Bank Street and Commercial Place Garage located at 520 E. Main Street, is hereby accepted.

Section 2:- That the City Manager is authorized to correct, amend, or revise the attached Terms and Conditions of Proposed Long Term Garage Parking Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Garage Parking Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A

TERMS AND CONDITIONS OF PROPOSED LONG TERM GARAGE PARKING AGREEMENT

1. PROVISION OF PARKING.

During the Term of this Agreement, the City shall provide parking for Tenant in the Commercial Place Garage and the Fountain Park Garage (together, the "Garage" or "Garages") subject to the following conditions:

(a) Parking capacity in the Fountain Park Garage of sixty-five (65) parking spaces (the "Fountain Park Maximum Allocated Amount") will be made available by the City for use by Tenant to provide long term parking for employees of Tenant pursuant to this Agreement. The parking spaces leased by Tenant in the Fountain Park Garage will not be reserved, will be available "24/7", available twenty four (24) hours per day, seven days per week, and there will be no designation for specific users.

(b) Parking capacity in the Commercial Place Garage of one hundred (100) parking spaces (the "Commercial Place Maximum Allocated Amount") will be set aside by the City exclusively for use by Tenant to provide long term parking for employees of Tenant pursuant to this Agreement. The parking spaces leased by Tenant in the Commercial Place Garage pursuant to this Agreement will be available "24/7", available twenty four (24) hours per day, seven days per week, and will be reserved generally in an area designated by the City for exclusive use by Tenant, but there will be no designation for specific users in individual spaces.

(c) If and when additional spaces become available in the Commercial Place Garage, as determined by the City, the City shall make such additional spaces available to Tenant, the Commercial Place Maximum Allocated Amount shall be increased by the number of such additional spaces, and the Fountain Park Maximum Allocated Amount shall be reduced by the number of such additional spaces. The City shall provide written notice of such additional spaces to Tenant.

(d) Any parking capacity in the Garages that have not been designated for use by Tenant may be made available by the City to other long term parkers or to the general public for transient parking on a non-exclusive, unreserved, first-come, first-served, open occupancy basis. Tenant specifically understands that maximum utilization of all parking spaces is extremely important to the City, and Tenant covenants to do all things reasonably necessary to permit the City to obtain such maximum utilization. On any given day, the City shall have no obligation under this Agreement to make available to Tenant any parking in excess of the Commercial Place Maximum Allocated Amount and the Fountain Park Maximum Allocated Amount.

(e) Tenant shall pay as rent to the City \$_____ per month for each of the parking spaces leased pursuant to this Agreement (the "Parking Fee"). The Parking Fee shall be paid by Tenant to the City in advance on or before the first day of each calendar month during the Term, as hereinafter defined, to the City of Norfolk, Division of Parking, 232 East Main Street, Norfolk, Virginia 23510 or to such other address as directed by the City. Rent for any partial calendar month shall be prorated and paid in advance.

(f) Tenant shall not permit any of the parking spaces leased hereunder to Tenant to be used for any purpose other than parking for Tenant's employees or contractors of Tenant. In the event the parking spaces leased by Tenant hereunder are used for any purposes other than parking for Tenant employees or its contractors, Tenant shall obtain the necessary Parking Permits from the City and shall pay the standard parking rate for such parking spaces. Failure to obtain such Parking Permits shall constitute a default under this Agreement and the City shall be entitled, in addition to its other remedies, to the difference between the Parking Fee and the then current standard reserved monthly parking rate for each month and for each space that was used in violation of the provisions set forth in this subsection (f).

(g) The term of this Agreement and the City's obligation to provide parking hereunder shall commence June 1, 2016 (the "Commencement Date") and expire at midnight on December 19, 2027 (the "term" or "Term"). Tenant shall have the option to extend the Term for up to four (4) additional periods of five (5) years each (each, a "Renewal Term") so long as the Garage(s) is still in operation and provided that Tenant is not then in default under the terms of this Agreement. As used in this Agreement, "term" or "Term" shall include the initial Term and any exercised Renewal Term.

(h) Tenant may, at any time, decrease the number of leased spaces with thirty (30) days' written notice to the City. Any decrease in the number of leased spaces shall first be effective in the Fountain Park Garage and then in the Commercial Place Garage. The number of spaces leased in the Commercial Place Garage by Tenant after any such reduction shall constitute the new Commercial Place Maximum Allocated Amount, which number shall not thereafter be increased without the prior written approval of the City Manager, and the number of spaces leased in the Fountain Park Garage by Tenant after any such reduction shall constitute the new Fountain Park Maximum Allocated Amount, which number shall not thereafter be increased without the prior written approval of the City Manager.

(i) Tenant agrees to cooperate in all reasonable respects with the City and use such systems as the City may reasonably adopt from time to time in order to track actual use of parking spaces and the number of vehicles parked in the Garages, so long as such systems are generally consistent with those used in other comparable City owned garages to track similar uses of parking. Tenant acknowledges and agrees that attempts by Tenant, its agents, employees or contractors to circumvent such tracking systems and park additional vehicles without payment therefor may constitute grounds for termination of this Agreement.

2. OPERATION AND USE.

(a) The City shall allow unimpeded and open access to Tenant and its employees to and from the Garages twenty-four (24) hours per day, seven (7) days per week, including holidays; provided, however, upon giving reasonable notice to Tenant, the City or its designated operator may restrict access to the Garages for the performance of necessary repairs or maintenance and such repairs or maintenance shall be completed as quickly as reasonably possible. If requested by Tenant, the City will provide replacement parking during such maintenance and repairs at other parking facilities owned by the City, and such facilities will be located as conveniently to the Tenant building as reasonably possible.

(b) Use of the Garages by Tenant employees shall be subject to such reasonable rules and regulations as the City may adopt from time to time. The City shall reasonably and equitably enforce such rules and regulations.

3. MAINTENANCE AND REPAIR.

(a) The City shall continue to maintain the Garages, or contract for the maintenance thereof, at all times in good order and condition, clean and free of rodents, in accordance with maintenance standards employed at comparable public parking areas in the City of Norfolk, so that the Garages shall comply with all building codes, ordinances, regulations, and laws of any governmental authority having jurisdiction thereof. The City shall be responsible for maintenance and repair of the Garages and shall pay all charges for water, sewer, gas, electricity and other utilities. The term "maintenance" shall include, but not be limited to, painting, operation, inspection, testing, repair, replacement of mechanical, electrical or similar components and/or cleaning the Garages, including elevators and appurtenant facilities.

(b) In the event of any damage or destruction of all or any portion of a Garage, the City shall undertake promptly to repair or rebuild the Garage and to provide replacement parking as promptly as reasonably possible after the date of such damage or destruction, or the City may choose not to make such repairs or rebuild the Garage in which case the City shall provide replacement parking as requested by Tenant for the remainder of the term of this Agreement at other parking facilities owned by the City, and such facilities will be located as conveniently to the Facility as reasonably possible. During the period of any such repair or rebuilding, the City shall provide replacement parking as provided by paragraph 3(a).

(c) The City shall provide and maintain interior and exterior illumination sufficient to illuminate the Garages and all means of pedestrian and vehicular access and egress thereto and therefrom, between twilight and one hour after dawn.

(d) The City shall provide suitable and sufficient signs in and around the Garages as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate entrances and on any general directories provided by the City in the Garages.

(e) The City shall have the right to make and complete, using high quality workmanship and materials, such replacements, repairs, alterations and improvements to the Garages as it deems necessary or desirable in connection with the aforementioned usage consistent with applicable zoning laws. During the period of such replacements, repairs, alterations and improvements, the City shall provide replacement parking as provided by paragraph 3(a).

(f) In performing maintenance, the City shall use commercially reasonable efforts to minimize interference with Tenant's use, occupation and enjoyment of the Garages. If possible, maintenance shall be confined to the area actually being so maintained.

4. TAX LIABILITY.

The provisions of this Agreement shall not be deemed to require Tenant to pay, by whatever name called, income or receipts or excess profits taxes assessed against the City, or any

capital levy, rent, gift or transfer taxes incurred by the City, pertaining to the ownership or operation of the Garage.

5. TITLE TO PROPERTY

The City covenants that it has full right to enter into this Agreement as of the date hereof and the City is or will be seized in fee simple of and have good and marketable title to the Garages, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent the City from performing its obligations hereunder.

6. INTEREST; ATTORNEYS' FEES.

If Tenant fails to pay the City any amounts payable under this Agreement when due, following receipt by Tenant of notice thereof from the City, such past-due payments shall bear interest from the date due until paid at the rate of six percent (6%) per annum. In addition, Tenant shall pay all reasonable out-of-pocket costs and expenses of collection (including court costs and reasonable attorneys' fees) incurred by the City in collecting sums due under this Agreement.

7. INSURANCE; LIABILITY.

The City shall not be liable to Tenant or Tenant's tenants, employees, agents or contractors for any injury, damage, compensation or claim directly or indirectly relating to or arising out of any use of the Garages by Tenant tenants, employees, agents or contractors unless such injury, damage, compensation or claim results from the City's gross negligence or willful misconduct.

8. ASSIGNMENT AND LEASING.

Tenant may not assign this Agreement, in whole or in part, or lease, sublease, assign or otherwise transfer all or any part of the parking spaces leased pursuant to this Agreement, except to Affiliate of Tenant. For purposes hereof, "Affiliate" shall mean as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to vote more than fifty percent (50%) of the voting stock or membership interests of such person or to direct or cause the direction of the management and policies of such person, whether through the ownership of voting stock or membership interests, or by contract or otherwise.

9. NOTICES.

All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City:

City Manager
City of Norfolk
1101 City Hall Building
810 Union Street
Norfolk, VA 23510

with copies to:

Director of General Services
232 East Main Street, Suite 250
Norfolk, Virginia 23510

and

City Attorney
Office of the City Attorney
900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

To Tenant:

with a copy to:

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

10. TERMINATION.

In the event Tenant violates any provision of this Agreement or defaults in any of its obligations hereunder, in addition to any other remedies set for herein or otherwise available, the City may terminate this Agreement if Tenant fails to cure such violation or default within thirty (30) days after Tenant's receipt of written notice of the violation or default. Tenant shall have the right to terminate this Agreement at any time by giving the City thirty (30) days written notice prior to the effective date of the termination.

11. ENTIRE AGREEMENT.

This Agreement along with the Performance Agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by the City and Tenant.

12. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

At all times during which any term of this Agreement is in effect, Tenant shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

13. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.

Tenant hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

14. MISCELLANEOUS.

(a) The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who shall be only those persons to whom this Agreement is permitted to be assigned in accordance with the terms and conditions of such agreement. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

(b) In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

(c) This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the Circuit Court of the City of Norfolk, Virginia.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

(e) Capitalized terms not otherwise defined herein shall have the meaning set forth in the Performance Agreement.

(f) This agreement or a memorandum hereof may be recorded in the land records of the City of Norfolk, Virginia, and the City agrees to execute and deliver to Tenant any such memorandum that accurately reflects the terms of this Agreement.